

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F109056

CONNIE GLISSON,
EMPLOYEE

CLAIMANT

U OF A COMMUNITY COLLEGE BATESVILLE,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 17, 2005

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE KEITH BLACKMAN, Attorney
at Law, Jonesboro, Arkansas.

Respondents represented by HONORABLE RICHARD S. SMITH,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

This case comes on for review by the Full
Commission on appeal by respondents from an opinion filed
herein by an Administrative Law Judge on August 19, 2004.

The Administrative Law Judge entered the following
findings of fact and conclusions of law:

1. Employer/employee/carrier
relationship existed on 6/25/01.
2. The claimant suffered a compensable
injury on or about 6/25/01.

3. AWW = \$265.00
4. WCR for TTD = \$177.00 and for PPD = \$154.00.
5. All treatment received by the claimant by authorized treating physician through March 13, 2003 has been paid for by the respondents.
6. The claimant has proven by a preponderance of the credible evidence that the period of additional therapy and medication proposed by Dr. Rosenzweig on March 10, 2003 is reasonably necessary medical treatment for her work related injury.
7. The claimant's attorney is entitled to the maximum statutory attorney's fee on the medical benefits awarded herein.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the decision of the Administrative Law Judge is correct and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

We therefore affirm the August 19, 2004 opinion of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the

decision of the Full Commission. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant is entitled to additional medical treatment in association with her compensable injury of June 25, 2001.

A carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Rosenzweig.

It is well established in workers' compensation law that employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah

Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

Compensability of the claimant's back injury, specifically a back strain, is undisputed in this claim. Furthermore, the respondents have provided medical services necessary for the treatment of the claimant's back injury to include treatment under the care of Dr. James Harbin, D.O., and per a change of physician granted by the Commission, treatment under the care of Dr. Kenneth Rosenzweig.

While under the care of Dr. Harbin, the claimant underwent an MRI of her lumbar spine on July 18, 2001, which revealed degenerative disc disease at L5-S1. Dr. Harbin prescribed the claimant pain medications and he referred her to physical therapy. Although the claimant was released by Dr. Harbin to return to full work duty on July 25, 2001, she was subsequently assessed by him with sciatica and taken off work again. Over the next several weeks, the claimant's course of treatment followed a similar pattern. Dr. Harbin would release the claimant to return to work, and upon further examination, the doctor would take the claimant off of work again or write her excuses for time that she had

missed prior to her scheduled rechecks. Dr. Harbin continued the claimant along a conservative course of treatment which included prescribing the claimant various medications such as Xanax, Zanaflex, Vioxx and Lorcet. The claimant's physical therapy sessions reportedly provided her with minimal relief as did an intramuscular steroid injection. In a letter dated December 4, 2001, Dr. Harbin wrote:

I have been the family practice doctor of this patient for many years. She was injured in June at her job with regard to her low back. The patient had an MRI of the lumbar spine at my direction in July which showed Degenerative Disc Disease with no focal disc herniation. This would be consistent with back strain.

Dr. Harbin further wrote that the claimant should seek a different type of employment and he assigned her with an impairment rating to the body as a whole "in the 5-10% range." The record reflects that the claimant continued to seek treatment from Dr. Harbin for her lower back pain and various other common illnesses through January of 2003. On March 4, 2003, the claimant was evaluated by Dr. Kenneth Rosenzweig at the Arkansas Specialty Care Center. Based upon his examination of the claimant and a review of her medical records, Dr. Rosenzweig recommended additional diagnostic

testing. An MRI performed on March 10, 2003, revealed "degenerative disc disease at L5-S1 with a mild bulge." Due to these unremarkable findings, Dr. Rosenzweig reasoned that additional testing is needed, i.e., a bone scan, CT scan, discogram, myelogram, etc... , in order to determine the precise source and origin of the claimant's persistent complaints of pain. In addition, Dr. Rosenzweig opined that additional conservative treatment to include medications and physical therapy is also necessary to determine the source of the claimant's "chronic undulating pain."

The objective medical evidence presented in this claim, including an MRI study taken shortly after her injury, reveals that the claimant's symptoms following her injury in June of 2001, were consistent with a back strain, for which she received necessary and adequate medical care under the direction of Dr. Harbin. Thereafter, the claimant was granted her statutory right to a one time change of physician, at which time she came under the care of Dr. Rosenzweig. Additional medical testing, specifically an MRI, showed no remarkable changes in the claimant's condition since the date of her injury. Moreover, the evidence reveals that the claimant suffered from joint pain and fibromyalgia prior to her injury in June of 2001.

Although additional medical testing may be necessary for this claimant to fully determine the precise origin of her ongoing pain and discomfort, it is unlikely that her current pain is associated with her back strain of June 2001. Based upon the above and foregoing, it is more likely than not that the claimant's continuing complaints of pain are not associated and are not causally related to lumbar strain that she sustained over three years ago. I find the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury, and the decision of the Administrative Law Judge should be reversed. Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner